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Attorneys for Plaintiffs Susanne Stone Marshall, Adele Fox, Marsha Peshkin, and Russell Oasis, Individually and on behalf of a class of similarly situated Plaintiffs

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

SUSANNE STONE MARSHALL, ADDELE FOX,
MARSHA PESHKIN, and RUSSELL OASIS,

Plaintiffs,

v.

CAPITAL GROWTH COMPANY; DECISIONS, INC.;
FAVORITE FUNDS; JA PRIMARY LIMITED
PARTNERSHIP; JA SPECIAL LIMITED
PARTNERSHIP; JAB PARTNERSHIP; JEMW
PARTNERSHIP; JF PARTNERSHIP; JFM

Adv. Pro. No. 15-01293 (SMB)

INVESTMENT COMPANIES; JLN PARTNERSHIP;
JMP LIMITED PARTNERSHIP; JEFFRY M.
PICOWER SPECIAL COMPANY; JEFFRY M.
PICOWER, P.C.; THE PICOWER FOUNDATION;
THE PICOWER INSTITUTE OF MEDICAL
RESEARCH; THE TRUST F/B/O GABRIELLE H.
PICOWER; BARBARA PICOWER, individually, and
as Executor of the Estate of Jeffry M. Picower, and as
Trustee for the Picower Foundation and for the Trust
f/b/o Gabrielle H. Picower; and IRVING H. PICARD,
Trustee for the Liquidation of Bernard L. Madoff
Investment Securities LLC,

Defendants.

**OBJECTION TO NOTICE OF SETTLEMENT OF ORDER
AND COUNTER-PROPOSED ORDER**

Plaintiffs Susanne Stone Marshall, Adele Fox, Marsha Peshkin and Russell Oasis (“Plaintiffs” or “Fox Parties”), respectfully object to the proposed form of Order “(Proposed Order)”, [ECF No. 52-1], submitted by Defendants Capital Growth Company; Decisions, Inc.; Favorite Funds; JA Primary Limited Partnership; JA Special Limited Partnership; JAB Partnership; JEMW Partnership; JF Partnership; JFM Investment Companies; JLN Partnership; JMP Limited Partnership; Jeffry M. Picower Special Company; Jeffry M. Picower, P.C.; The Picower Foundation; The Picower Institute of Medical Research; The Trust F/B/O Gabrielle H. Picower; Barbara Picower, individually, and as Executor of the Estate of Jeffry M. Picower, and as Trustee for the Picower Foundation and for the Trust f/b/o Gabrielle H. Picower (the “Picower Parties”).

In support of said Objection, the Fox Parties state as follows:

1. In its decretal provisions, the Proposed Order states “The Fox Parties’ Declaratory Judgment Complaint is dismissed with prejudice.” Proposed Order ¶ 2.
2. Dismissal with prejudice is inconsistent with the Memorandum Decision Denying Motion for Declaratory Judgment and Dismissing Complaint dated March 7, 2017 [ECF No. 49], in which the Court expressly refused the Picower Parties’ application

“to deny[the Fox Parties] leave to replead....” Memorandum Decision at 27.

3. Accordingly, the dismissal of the Fox Parties’ Declaratory Judgment Complaint was without prejudice; the words “with prejudice” in Paragraph 2 of the Proposed Order should be stricken and the words “without prejudice” substituted in their stead.
4. For the convenience of the Court, a copy of a Counter Proposed -Order reflecting this change is attached as Exhibit 1.

WHEREFORE, the Fox Parties respectfully requests that the Court sign and enter the form of Order annexed hereto as Exhibit 1.

Dated: March 23, 2017
New York, New York

CHAITMAN LLP

By: /s/ Helen Davis Chaitman
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